

FIRST REGULAR SESSION

HOUSE BILL NO. 83

94TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVES KRAUS (Sponsor) AND MCGHEE (Co-sponsor).

Pre-filed December 6, 2006 and copies ordered printed.

D. ADAM CRUMBLISS, Chief Clerk

0569L.011

AN ACT

To repeal section 559.021, RSMo, and to enact in lieu thereof two new sections relating to payment of costs of prosecution of criminal offenses, with penalty provisions.

Be it enacted by the General Assembly of the state of Missouri, as follows:

Section A. Section 559.021, RSMo, is repealed and two new sections enacted in lieu thereof, to be known as sections 550.015, and 559.021, to read as follows:

550.015. 1. Whenever a defendant pleads guilty to or is found guilty of a felony offense, regardless of whether such person receives a sentence of a fine, jail time, prison time, or probation or parole after a suspended imposition of sentence or a suspended execution of sentence, or any combination of those options, as part of the disposition of that defendant's case, and in addition to any other penalty authorized by law, the court may order the defendant as part of the costs of the case, to reimburse the state or a local unit of government for expenses incurred in relation to that incident, including but not limited to, expenses for an emergency response and expenses for prosecuting the defendant as provided in this section.

2. The expenses for which reimbursement may be ordered under this section include all of the following:

(1) The salaries or wages, including overtime pay, of law enforcement personnel for time spent responding to the incident from which the offense arose, arresting the defendant who committed the offense, processing the defendant after the arrest, preparing reports on the incident, and collecting and analyzing evidence, including, but not limited to,

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

16 **determining bodily alcohol content and determining the presence of and identifying**
17 **controlled substances in the blood, breath, or urine;**

18 **(2) The salaries, wages, or other compensation, including overtime pay, of fire**
19 **department and emergency medical service personnel, including volunteer firefighters or**
20 **volunteer emergency medical service personnel, for time spent in responding to and**
21 **providing fire fighting, rescue, and emergency medical services in relation to the incident**
22 **from which the offense arose;**

23 **(3) The cost of medical supplies lost or expended by fire department and emergency**
24 **medical service personnel, including volunteer firefighters or volunteer emergency medical**
25 **service personnel, in providing services in relation to the incident from which the offense**
26 **arose;**

27 **(4) The salaries, wages, or other compensation, including, but not limited to,**
28 **overtime pay of prosecution personnel for time spent investigating and prosecuting the**
29 **crime or crimes the defendant plead guilty to or was found guilty of;**

30 **(5) The cost of extraditing a defendant from another state to this state including,**
31 **but not limited to, all of the following:**

32 **(a) Transportation costs;**

33 **(b) The salaries or wages of law enforcement and prosecution personnel, including**
34 **overtime pay, for processing the extradition and returning the defendant to this state;**

35 **(c) The cost of incarcerating the defendant whether in a jail or prison or both.**

36 **3. If police, fire department, or emergency medical service personnel from more**
37 **than one unit of government incurred expenses as described in subsection 2 of this section,**
38 **the court may order the defendant to reimburse each unit of government for the expenses**
39 **it incurred;**

40 **4. The amount ordered to be paid under this section shall be paid to the clerk of the**
41 **court, who shall transmit the appropriate amount to the unit or units of government named**
42 **in the order to receive reimbursement. If not otherwise provided by the court under this**
43 **subsection, the reimbursement ordered under this section shall be made immediately.**
44 **However, the court may require that the defendant make the reimbursement ordered**
45 **under this section within a specified period of time or in specified installments or both.**

46 **5. The court shall not require a defendant to pay costs under this section unless the**
47 **defendant is or will be able to pay them during the term of the sentence including any**
48 **period of incarceration, probation or parole or time period granted for payment of fines**
49 **and or costs. In determining the amount and method of payment of costs, the court shall**
50 **take into account the defendant's financial resources and the nature of the burden that**
51 **payment of costs will impose, with due regard to his or her other obligations.**

52 **6. A defendant who is required to pay costs under this section and who is not in**
53 **willful default of the payment of the costs may petition the sentencing judge or his or her**
54 **successor at any time for a remission of the payment of any unpaid portion of those costs.**
55 **If the court determines that payment of the amount due will impose a manifest hardship**
56 **on the defendant or his or her immediate family, the court may remit all or part of the**
57 **amount due in costs or modify the method of payment.**

58 **7. If the person who committed the offense is placed on probation or paroled, any**
59 **reimbursement ordered under this section shall be a condition of that probation or parole.**
60 **The court may revoke probation or parole and the board of probation and parole may**
61 **revoke parole if the person fails to comply with the order and if the person has not made**
62 **a good faith effort to comply with the order. In determining whether to revoke probation**
63 **or parole, the court or board of probation and parole shall consider the person's**
64 **employment status, earning ability, number of dependents, and financial resources, the**
65 **willfulness of the person's failure to pay, and any other special circumstances that may**
66 **have a bearing on the person's ability to pay.**

67 **8. An order for reimbursement under this section may be enforced by the**
68 **prosecuting attorney or the state or local unit of government named in the order to receive**
69 **the reimbursement in the same manner as a judgment in a civil action.**

70 **9. Notwithstanding any other provision of this section, a defendant shall not be**
71 **imprisoned, jailed, or incarcerated for a violation of probation or parole or otherwise for**
72 **failure to make a reimbursement as ordered under this section unless the court, after**
73 **evidentiary hearing, makes a finding supported by a preponderance of the evidence that**
74 **the person either willfully refused to make the payment or that the person willfully,**
75 **intentionally, and purposefully failed to make sufficient bona fide efforts to acquire the**
76 **resources to pay.**

559.021. 1. The conditions of probation shall be such as the court in its discretion deems
2 reasonably necessary to ensure that the defendant will not again violate the law. When a
3 defendant is placed on probation he **or she** shall be given a certificate explicitly stating the
4 conditions on which he **or she** is being released.

5 2. In addition to such other authority as exists to order conditions of probation, the court
6 may order such conditions as the court believes will serve to compensate the victim, any
7 dependent of the victim, any statutorily created fund for costs incurred as a result of the
8 offender's actions, or society. Such conditions may include restorative justice methods pursuant
9 to section 217.777, RSMo, or any other method that the court finds just or appropriate including,
10 but not limited to:

11 (1) Restitution to the victim or any dependent of the victim, or statutorily created fund
12 for costs incurred as a result of the offender's actions in an amount to be determined by the judge;

13 (2) The performance of a designated amount of free work for a public or charitable
14 purpose, or purposes, as determined by the judge;

15 (3) Offender treatment programs;

16 (4) Work release programs in local facilities; and

17 (5) Community-based residential and nonresidential programs.

18 3. The defendant may refuse probation conditioned on the performance of free work.
19 If he **or she** does so, the court shall decide the extent or duration of sentence or other disposition
20 to be imposed and render judgment accordingly. Any county, city, person, organization, or
21 agency, or employee of a county, city, organization or agency charged with the supervision of
22 such free work or who benefits from its performance shall be immune from any suit by the
23 defendant or any person deriving a cause of action from him **or her** if such cause of action arises
24 from such supervision of performance, except for an intentional tort or gross negligence. The
25 services performed by the defendant shall not be deemed employment within the meaning of the
26 provisions of chapter 288, RSMo. A defendant performing services pursuant to this section shall
27 not be deemed an employee within the meaning of the provisions of chapter 287, RSMo.

28 4. In addition to such other authority as exists to order conditions of probation, in the
29 case of a plea of guilty or a finding of guilt, the court may order the assessment and payment of
30 a designated amount of restitution to a county law enforcement restitution fund established by
31 the county commission pursuant to section 50.565, RSMo. Such contribution shall not exceed
32 three hundred dollars for any charged offense. Any restitution moneys deposited into the county
33 law enforcement restitution fund pursuant to this section shall only be expended pursuant to the
34 provisions of section 50.565, RSMo.

35 5. A judge may order payment to a restitution fund only if such fund had been created
36 by ordinance or resolution of a county of the state of Missouri prior to sentencing. A judge shall
37 not have any direct supervisory authority or administrative control over any fund to which the
38 judge is ordering a defendant to make payment.

39 6. A defendant who fails to make a payment to a county law enforcement restitution fund
40 may not have his or her probation revoked solely for failing to make such payment unless the
41 judge, after evidentiary hearing, makes a finding supported by a preponderance of the evidence
42 that the defendant either willfully refused to make the payment or that the defendant willfully,
43 intentionally, and purposefully failed to make sufficient bona fide efforts to acquire the resources
44 to pay.

45 **7. In addition to such other authority as exists to order conditions of probation, in**
46 **the case of a plea of guilty or a finding of guilt for a felony offense, the court may order the**

47 **defendant to pay as part of the costs of the case reimbursement for the costs of prosecution**
48 **as provided in section 550.015, RSMo.**

49 **8. A defendant who fails to make reimbursement as provided for in subsection 7**
50 **of this section may not have his or her probation revoked solely for failing to make such**
51 **payment unless the judge, after evidentiary hearing, makes a finding supported by a**
52 **preponderance of the evidence that the defendant either willfully refused to make the**
53 **payment or that the defendant willfully, intentionally, and purposefully failed to make**
54 **sufficient bona fide efforts to acquire the resources to pay.**

55 **[7.] 9.** The court may modify or enlarge the conditions of probation at any time prior to
56 the expiration or termination of the probation term.

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